

ADAMS, J.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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|----------------------------|---|------------------------------|
| DANIEL JOPEK, et al., |) | CASE NO. 1:06CV1000 |
| |) | |
| Plaintiffs, |) | |
| |) | JUDGE JOHN R. ADAMS |
| v. |) | |
| |) | <u>MEMORANDUM OF OPINION</u> |
| CITY OF CLEVELAND, et al., |) | <u>AND ORDER</u> |
| |) | [RESOLVING DOC. 40] |
| Defendants. |) | |

This is an action that was removed to this Court pursuant to 28 U.S.C. §§ 1331, 1343, and 1441. On March 21, 2006, plaintiffs Daniel and Rochelle Jopek filed a seven-count complaint in the Cuyahoga County, Ohio Court of Common Pleas, being Case No. CV-06-587235. The First Cause of Action is for false arrest. The Second Cause of Action is for malicious prosecution. The Third Cause of Action alleges federal constitutional claims under the Fourth Amendment. The Fourth Cause of Action is for abuse of process. The Fifth Cause of Action is for infliction of emotional distress. The Sixth and Seventh causes of action are for loss of consortium.

On April 24, 2006, defendant City of Cleveland, with the consent of defendant Anthony Jordan, removed this case from state court on the basis of federal question jurisdiction. The City maintained that

Plaintiffs' action is based upon alleged violations of Plaintiff's rights under the U.S. Constitution, and is brought under 42 U.S.C. §[] 1983. The action is wholly of a civil nature of which this Court has original jurisdiction under the provisions of Title 28 U.S.C. §§ 1343(A)(3) and/or 1331, and is one which may be removed to this Court under the provisions of Title 28 U.S.C. §§ 1441(a) and (b), as being a civil action involving a claim or claims over which this Court has original jurisdiction and involving a claim or right arising under the Constitution, treaties, or laws of the United States. . . .

Petition for Removal (Doc. 1) at 1-2.

This action is before the Court upon plaintiffs' Notice of Withdrawal of Claims (Doc. 38) and Motion for Leave to File Amended Complaint *Instante* (Doc. 40). Plaintiffs have attached a copy of the proposed amended pleading to the motion. The Court has reviewed the motion, which states "Defendants have no objection." For good cause shown, the motion is GRANTED. For the reasons stated below, the Court will remand the case to state court.

Plaintiffs' Amended Complaint contains only state law claims. However, jurisdiction in this case is based solely on the existence of a federal question, and this Court has jurisdiction over state law claims only insofar as they are pendent to a federal claim. Federal courts have the power to exercise pendent jurisdiction where the state and federal claims derive from a common nucleus of facts such that plaintiffs would ordinarily be expected to try them all in one judicial proceeding, and when the federal claim has sufficient substance to confer subject matter jurisdiction. 28 U.S.C. § 1367; *Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966). Plaintiffs have, by eschewing claims based on federal law, chosen to have the cause heard in state court. Since the federal claims have been withdrawn before trial and the Amended Complaint possesses no independent basis of federal jurisdiction, it is appropriate for this Court to remand the case to the Cuyahoga County, Ohio Court of Common Pleas. *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343 (1988).

IT IS SO ORDERED.

June 28, 2007
Date

/s/ John R. Adams
John R. Adams
U.S. District Judge